

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MILE KOSOVAC,

Petitioner,

vs.

Case No. 07-CV-13511  
HON. GEORGE CARAM STEEH

BUREAU OF CITIZENSHIP AND  
IMMIGRATION SERVICES,

Respondent.

\_\_\_\_\_ /

ORDER DISMISSING CLAIMS WITHOUT PREJUDICE FOR  
CAUSE NOT SHOWN UNDER JANUARY 14, 2008 ORDER (# 5) AND  
FOR LACK OF FEDERAL SUBJECT MATTER JURISDICTION

On January 14, 2008, petitioner Mile Kosovac was ordered to show cause why his complaint for de novo review of the denial of his application for naturalization by the Bureau of Citizenship and Immigration Services (BCIS) should not be dismissed for lack of prosecution. Previously, on August 30, 2007, Kosovac was ordered by the court to show cause why his complaint should not be dismissed for lack of federal jurisdiction due to a failure to exhaust administrative remedies:

A person whose application for naturalization has been denied by an immigration officer following an examination under 8 U.S.C. § 1446 may request a hearing before an immigration officer under 8 U.S.C. § 1447(a). If the person's application is denied by the immigration officer following the hearing, the person may seek de novo review before the United States district court in which the person resides. 8 U.S.C. § 1421(c). A BCIS determination denying an application for naturalization is not subject to judicial review, however, until the applicant has exhausted all available administrative remedies. 8 C.F.R. § 336.9(d). A district court lacks jurisdiction to review the denial of an application for naturalization if the applicant has not requested a hearing before an immigration officer under 8 U.S.C. § 1447(a). Baez-Fernandez v. Immigration and Naturalization

Service, 385 F.Supp.2d 292, 294 (S.D.N.Y. Jan, 18, 2005).

August 30, 2007 Order, at 1-2. Kosovac was also ordered to timely and properly serve BCIS with a summons and copy of the complaint, and was forewarned that his failure to do so would result in the dismissal of this matter without prejudice. Id. at 2. The court dismissed the August 30, 2007 show cause order on September 18, 2007 finding that Kosovac showed in a September 12, 2007 response that he had exhausted his administrative remedies before filing this lawsuit. September 18, 2007 Order, at 1. The court again forewarned Kosovac that his "failure to timely and properly serve the [BCIS] with this lawsuit, or to file such proof of service with this court, may result in the dismissal of his petition without prejudice for lack of prosecution." Id. at 2. Kosovac has not filed a proof of service with the court, prompting the instant January 14, 2008 show cause order.

On January 18, 2008, Kosovac filed a response to the latest show cause order informing the court that he had filed an I-290B Notice of Appeal on October 5, 2007. Kosovac explains he failed to file this I-290B Notice of Appeal with the court due to a misunderstanding, and attaches a copy of an October 25, 2007 BCIS letter and BCIS receipt for \$585.00 for "I-290B." Kosovac expresses his hope that this delayed submission "will not affect the final decision by the U.S. Citizenship and Immigration Service."

Kosovac's January 18, 2008 response demonstrates that: (1) he has not exhausted his administrative remedies; and (2) he has not served BCIS with a copy of the August 21, 2007 complaint he filed here to initiate this lawsuit. Kosovac has been notified on two separate occasions that this lawsuit is subject to dismissal if a summons and a copy of the complaint are not timely and properly served on BCIS. The 120-day period for service expired on December 21, 2007. Fed. R. Civ. P. 4(m). Consistent with the court's prior

orders, Baez-Fernandez, 385 F.Supp.2d at 294, and Federal Rule of Civil Procedure 4(m),

Mile Kosovac's complaint in this matter is hereby DISMISSED without prejudice for failure to show cause under the court's January 14, 2008 order and, alternatively, for lack of subject matter jurisdiction in failing to exhaust his administrative remedies before filing this lawsuit.

SO ORDERED.

Dated: January 29, 2008

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 29, 2008, by electronic and/or ordinary mail.

s/Marcia Beauchemin  
Deputy Clerk